

## REMARKS

The Office Action mailed June 16, 2009, has been received and reviewed. Claims 1-21 are pending in the application. Claims 1-5 are allowed. Claims 14-17 are objected to. Claims 6-13 and 18-21 stand rejected. Applicant has amended claims 6, 9, 14, 18 and 21, and respectfully requests reconsideration of the application as amended herein. Support for Applicant's amendments is found in at least paragraph [1070] of Applicant's as-filed specification. No new matter has been added.

### Claim Objections

The Office Action states:

Claim 14 is objected to because of the following informalities:

With respect to claim 14, in line 1, insert —encoded with computer executable instructions—after “A computer-readable medium” since all computer executable instructions must be stored and/or encoded in a medium for execution. (Office Action, p. 2).

Applicant has amended claim 14 as requested by the Examiner and respectfully requests the objection of claim 14, with claims 15-17 depending therefrom, be withdrawn.

### 35 U.S.C. § 101 Rejections

Claims 6-13 stand rejected under 35 U.S.C. § 101, asserting that the claimed invention is directed to non-statutory subject matter. Applicant respectfully traverses this rejection, as hereinafter set forth.

The Office Action states:

Claims 6-13 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, *a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing.* (Office Action, p. 2; emphasis added).

Applicant has amended independent claim 6, from which claims 7-13 depends to recite, *inter alia*, “adjusting the first transmission energy setpoint ... at a processor” which ties the step or act to another statutory class, namely a machine or apparatus. Accordingly, Applicant's

amended independent claim 6 with claims 7-13 depending therefrom are directed to statutory subject matter under 35 U.S.C. § 101. Accordingly, Applicant respectfully requests the rejections of claims 6-13 under 35 U.S.C. § 101 be withdrawn.

### 35 U.S.C. § 102(e) Anticipation Rejections

#### Anticipation Rejection Based on U.S. Patent No. 6,771,700 to Razoumov et al.

Claims 6-13 and 18-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,771,700 to Razoumov (“Razoumov”). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(e) anticipation rejections of claims 6-13 and 18-21 are improper because Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims. Since Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims, Razoumov cannot anticipate under 35 U.S.C. § 102 the presently claimed invention of amended independent claim 6 and claims 7-13 depending therefrom.

In the Response to Arguments, the Examiner states that Applicant’s “claim 6 does not recite that the *first transmission energy set point is continuously determined* during a first transmission of data ....” (Office Action, p. 7; emphasis added).

Applicant respectfully notes that Applicant’s amended independent claims 6 and 18 now recite, inter alia, “continuously adjusting the first transmission energy *setpoint on occurrence of a first transmission error* in the first transmission” which is not disclosed in Razoumov. Applicant respectfully notes that Applicant’s “first transmission” is also described in Applicant’s specification as an “initial transmission” of a specific portion of data which is different from the “retransmission” of the portion of data. (Specification, [1081]).

Specifically, Applicant’s invention as presently claimed in independent claim 6, from which claims 7-13 depend and independent claim 18, from which claims 19-21 depend, recites:

6. In a wireless communication system, a method comprising:  
determining a first transmission energy setpoint to achieve a first transmission frame error rate in a first transmission of data;  
*continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error* in the first transmission at a processor, wherein the first transmission error is received from a receiver;  
determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission of the data; and  
*adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission*, wherein the retransmission error is received from the receiver. (Emphasis added.)

18. An apparatus, comprising:  
means for determining a first transmission energy setpoint to achieve a first transmission frame error rate in a first transmission of data;  
means for *continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission*, wherein the first transmission error is received from a receiver;  
means for determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission of the data; and  
means for *adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission*, wherein the retransmission error is received from the receiver. (Emphasis added.)

Applicant's invention as claimed in independent claims 6 and 18 recite "*continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error* in the first transmission" which is not disclosed in Razoumov. Generally, Razoumov does not appear to have two independently adjustable setpoints used to perform independent steps nor is the initial setpoint continuously adjusted based upon errors in initial transmissions. Specifically, at least Applicant's claimed elements of "*continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error* in the first transmission" and "*adjusting the retransmission energy setpoint on occurrence of a retransmission error* in the retransmission" are not disclosed in Razoumov.

Applicant respectfully notes that Applicant claims continuous adjustments to an initial or "first transmission energy setpoint" based upon "occurrence of a first transmission error" in the initial transmission of the data. Applicant further claims adjustments to a "retransmission energy setpoint" based upon "occurrence of a retransmission error" in the retransmission of the data (not the initial transmission of the data). Applicant does not dispute that Razoumov discloses

adjusting energy levels, however, Razoumov's approach is not the same approach for adjusting as claimed by Applicant in amended independent claims 6 and 18.

According to Razoumov, Razoumov's adjustments to the power level for a successive transmission is based upon the outcome (e.g., frame error rate) of the previous transmission. Specifically, Razoumov discloses the power levels of successive transmissions (e.g., retransmission 1, retransmission 2, etc.) are based upon the outcome of the previous transmissions (e.g., *initial transmission*, retransmission 1, etc.) and not initial transmission setpoints being adjusted based upon the error outcome of initial transmissions and retransmission setpoints being adjusted based upon the error outcome of the retransmissions. (Razoumov, col. 4, lines 30-40, col. 3, lines 62-63 and col. 7, formula 22). In other words, Razoumov discloses adjusting a subsequent transmission's power level based upon the outcome of the immediately previous transmission (i.e., either initial transmission or retransmission).

In distinct contrast, Applicant's invention as claimed in amended independent claims 6 and 18 recite, in part, "continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission" and "adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission". Accordingly, Applicant's invention as presently claimed in amended independent claims 6 and 18 is not disclosed in "as complete detail as is contained in the claim" as is required for anticipation under 35 U.S.C. §102. Therefore, Razoumov cannot anticipate under 35 U.S.C. §102 Applicant's invention as presently claimed in amended independent claims 6 and 18, and claims 7-13 and 19-21 respectively depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

#### **Allowed Claims**

Claims 1-5 are allowed. Claims 14-17 contain allowable subject matter but are objected to for minor informalities. Applicant has addressed the minor informalities of claims 14-17. Accordingly, Applicant acknowledges this indication with appreciation.

## CONCLUSION

Claims 1-21 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned representative.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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